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THE TRIAL OF CRIME IN FRANCE.

THE reports of the Nayve trial at Bourges published in the daily press will have filled Anglo-Saxon readers on both sides of the Atlantic with a sense of the superiority of their own more even-handed criminal procedure as compared with the system of badgering the accused in practice among our French friends.

Not to caution the prisoner against incriminating himself, but to goad him on by provocation into admissions, is not what we consider a proper part for a President of a Court of Assize to play. To interrogate the prisoner and receive the evidence of the witnesses without cross-examination is an inversion of what we deem fair towards a man whose life or liberty is at stake.

Justified, however, as such reflections are, there are details of French criminal procedure which account in some measure for a state of things so abhorrent to our notions of justice, and show that the censure one is too ready to level at the absence of conditions familiar to us as those of the "most elementary fair play," need some qualification.

An essential fact which must be borne in mind to understand French criminal procedure is that the trial in court is not the sole judicial examination of the facts of the case. It is really only a public consecration of the result of two other trials, which have preceded it behind the scenes. The theory is that unless there is overwhelming evidence against the accused, he should never reach an open trial at all. The jury, as it were, are only his final judge. If they acquit the accused, they reverse the decisions of two jurisdictions of legal specialists. The fight before the jury is thus practically a fight between the judges, who have already found him guilty (or he would not be in court), and the accused, who still persists in the assertion of his innocence.

Before the *Cour d'Assises* is reached, the prisoner will have passed through the hands of a *Procureur* (public prosecutor), a *Juge d'instruction* (examining magistrate), the appeal judges assembled as a *Chambre de mises en accusation* (corresponding to our grand jury), and the judge about to preside at the *Cour d'Assises*.

The business of the *Procureur*, apart from his civil functions, is *la recherche* and *la poursuite* of crimes, misdemeanors, and other offences. On a crime coming to his knowledge, it is his duty to

take the necessary measures to bring the delinquent to justice, and, as soon as possible, to transmit police reports, documents, weapons, instruments, utensils, or any other evidence seized, to the *Juge d'instruction*.

The *Juge d'instruction*, who is one of the judges of the Court of First Instance, proceeds at once to the "interrogation" of the accused, and in practice his ability is measured by the ingenuity he displays in bringing about admissions or a confession. As an instance of the methods a *juge d'instruction* will employ, I may mention that in a case some years ago a well known Paris *juge d'instruction* entrapped an accused person by telephoning to him in the name of a friend, supposed to be an accomplice. The matter was commented upon at the time, but the general opinion was that a *juge d'instruction* is entitled to employ any means he chooses to arrive at the truth.

This judge cites all possible witnesses, and takes down their depositions. If he thinks fit, he may visit any place for the further investigation of the crime, provided he is accompanied by the *procureur* as prosecutor. When the investigation of the case is terminated, the papers are communicated to the *procureur*, who after examining them presents his charge to the *juge*. The latter thereupon delivers an "ordinance" declaring the prisoner either guilty or not guilty, and, if guilty, stating whether of a crime, misdemeanor, or petty offence. If declared not guilty, he is forthwith discharged.

When the decision entails trial by the *Cour d'Assises*, and "the charge is sufficiently proved," says the Code, the case passes by the medium of the *procureur* attached to the lower court, to another *procureur* called the *Procureur Général*, attached to the appeal court, a section of which forms the *Chambre des Mises en accusation*, an institution exercising functions more or less equivalent, as we have indicated, to those of our grand jury.

The *Procureur Général* lays the charge before this court, sitting again, as in the case of the *juge d'instruction*, with closed doors. All the papers, documents, and reports are read over at this hearing. After the *Procureur Général* has been heard on the case he withdraws, and the judges decide what they think fit. Thus they may order further investigation of the allegations and evidence, or acquit the prisoner, or alter the charge and, re-labelling the offence, send the case for trial before a lower jurisdiction, or send it on as received to the *Cour d'Assises*.

In the last alternative, the *Procureur Général* draws up a *mise en accusation*, or indictment. This is communicated to the accused, now removed to the lock-up adjoining the court. It is the President's turn to "hear" the accused in private, and make a last effort before trial to extract a confession.

These preliminaries having been completed, the trial in due course comes on, with all the strangely undignified accompaniments which caused so much surprise to Englishmen at home and in America in the *Nayve* case.

However, it is now seen that, objectionable as the procedure in court may be, unfair as it may appear to the prisoner, and contrary as it is to our notions of justice, a person accused of a crime does not reach the *Cour d'Assises* without ample precautions being taken to establish his guilt. In most cases the judges perform their duties behind the scene, with a great deal more respect for individual freedom and fair play than would appear from the mode of operation in court. In fact, it is rare that an innocent man reaches the *Cour d'Assises*.

The reader will also understand now why an acquittal by the jury seems a slur on the competency of the professional judge.

Such a criminal procedure as I have described, in spite of all its precautions to secure a thorough, if not always fair trial, will of course lend itself to abuse where the judges are influenced by exceptional considerations. Some wag of a bitter temperament once said that, if he was accused of stealing even one of the towers of Notre Dame, he would make haste to put the Belgian frontier between himself and a *juge d'instruction*. Despite the exaggeration of this sarcasm, there are many in France who have had in times gone by to feel its implication was not far from the truth. The fact that there is a movement in France in favor of making the proceedings before the *juge d'instruction* public shows where the weakest place in the system is. Such publicity would be a guaranty for the examining judge as well as for the prisoner, and might help to remove a certain distrust of repressive justice which it cannot be denied still prevails in France. All the reform the Legislature, however, is likely for the present to make, is to allow the accused to be assisted by his counsel at the examinations behind the scene.

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